

## **IC 23-17-19**

### **Chapter 19. Merger**

#### **IC 23-17-19-1**

##### **Authorization; plan; required provisions; optional provisions**

Sec. 1. (a) Subject to the limitations in section 2 of this chapter, nonprofit corporations may merge into a business or nonprofit corporation if the plan of merger is approved under section 3 of this chapter.

(b) A plan of merger must set forth the following:

(1) The name of the following:

(A) Each corporation planning to merge.

(B) The surviving corporation into which each corporation plans to merge.

(2) The terms and conditions of the planned merger.

(3) The manner and basis, if any, of converting the memberships of each public benefit or religious corporation into memberships of the surviving or other corporation.

(4) If the merger involves a mutual benefit corporation, the manner and basis, if any, of converting memberships of each merging corporation into:

(A) memberships, obligations, or securities of the surviving or any other corporation; or

(B) cash or other property in whole or part.

(c) The plan of merger may set forth the following:

(1) Amendments to or a restatement of the articles of incorporation or bylaws of the surviving corporation to be effected by the planned merger.

(2) Other provisions relating to the planned merger.

(3) A delayed effective date.

*As added by P.L.179-1991, SEC.1.*

#### **IC 23-17-19-2**

##### **Mergers without prior approval; conditions**

Sec. 2. (a) Without the prior approval of the circuit court or superior court of the county where the corporation's principal office or, if the principal office is not located in Indiana, the corporation's registered office, is located in a proceeding that the attorney general has been given written notice, a public benefit or religious corporation may only merge with the following:

(1) A public benefit or religious corporation.

(2) A foreign corporation that would qualify under this article as a public benefit or religious corporation.

(3) A wholly-owned foreign or domestic business or mutual benefit corporation if the public benefit or religious corporation is the surviving corporation and continues to be a public benefit or religious corporation after the merger.

(4) A business or mutual benefit corporation if the following conditions are met:

(A) On or before the effective date of the merger, assets with

a value equal to the greater of the fair market value of the net tangible and intangible assets, including goodwill, of the public benefit corporation or the fair market value of the public benefit corporation if the corporation were to be operated as a business concern are transferred or conveyed to a person who would have received the corporation's assets under IC 23-17-22-6(a)(5) and IC 23-17-22-6(a)(6) had the corporation dissolved.

(B) The business or mutual benefit corporation returns, transfers, or conveys any assets held by the business or mutual benefit corporation upon condition requiring return, transfer, or conveyance, that occurs by reason of the merger, in accordance with the condition.

(C) The merger is approved by a majority of directors of the public benefit or religious corporation who are not and will not become:

- (i) members in;
- (ii) shareholders in; or
- (iii) officers, employees, agents, or consultants of; the surviving corporation.

(D) The requirements of section 8 of this chapter are met.

(b) At least twenty (20) days before consummation of any merger of a public benefit corporation or a religious corporation under subsection (a)(4), notice, including a copy of the proposed plan of merger, must be delivered to the attorney general.

(c) Without the prior written consent of the attorney general or of the circuit court or superior court of the county where:

- (1) the corporation's principal office is located; or
- (2) if the principal office is not located in Indiana, the corporation's registered office is located;

in a proceeding in which the attorney general has been given notice, a member of a public benefit or religious corporation may not receive or keep anything as a result of a merger other than a membership or membership in the surviving public benefit or religious corporation. The court shall approve the transaction if the transaction is in the public interest.

*As added by P.L.179-1991, SEC.1.*

### **IC 23-17-19-3**

#### **Approval of mergers**

Sec. 3. (a) Unless this article, articles of incorporation, bylaws, or the board of directors or members acting under subsection (c) require a greater vote or voting by class, a plan of merger to be adopted must be approved as follows:

- (1) By the board of directors.
  - (2) By the members, if any, by a majority of the votes cast.
  - (3) In writing by a person whose approval is required by articles of incorporation authorized under IC 23-17-17-1 for an amendment to articles of incorporation or bylaws.
- (b) If a corporation does not have members, a merger must be

approved by a majority of the directors in office at the time the merger is approved. In addition, the corporation shall provide notice of any directors meeting at which the approval is to be obtained under IC 23-17-15-3. The notice must also state that the purpose of the meeting is to consider the proposed merger.

(c) Unless articles of incorporation provide otherwise, a proposed merger and plan of merger must be initiated by a board of directors. The board of directors may condition the submission of the proposed merger on receipt of a higher percentage of affirmative votes of the members or on another basis.

(d) If a board of directors seeks to have the plan approved by the members at a membership meeting, the corporation shall give notice to the corporation's members of the proposed membership meeting under IC 23-17-10-5. The notice must also state that the purpose of the meeting is to consider the plan of merger and contain or be accompanied by a copy or summary of the plan. The copy or summary of the plan for members of the surviving corporation must include a provision that, if contained in a proposed amendment to articles of incorporation or bylaws, would entitle members to vote on the provision. The copy or summary of the plan for members of the disappearing corporation must include a copy or summary of the articles of incorporation and bylaws that will be in effect immediately after the merger takes effect.

(e) If a board of directors seeks to have a plan approved by the members by written consent or written ballot, the material soliciting the approval must contain or be accompanied by a copy or summary of the plan. The copy or summary of the plan for members of the surviving corporation must include a provision that, if contained in a proposed amendment to the articles of incorporation or bylaws, would entitle members to vote on the provision. The copy or summary of the plan for members of the disappearing corporation must include a copy or summary of the articles and bylaws that will be in effect immediately after the merger takes effect.

(f) Voting by a class of members is required on a plan of merger if the plan contains a provision that, if contained in a proposed amendment to articles of incorporation or bylaws, would entitle the class of members to vote as a separate voting group on the proposed amendment under IC 23-17-17-6 or IC 23-17-18-2. The plan is approved by a class of members by a majority of the votes cast by the class.

(g) After a merger is adopted and before articles of merger are filed, the planned merger may be abandoned subject to any contractual rights without further action by members or other persons who approved the plan:

- (1) under the procedure set forth in the plan of merger; or
- (2) if a procedure is not set forth, in the manner determined by the board of directors.

*As added by P.L.179-1991, SEC.1. Amended by P.L.1-1992, SEC.127; P.L.96-1993, SEC.13.*

#### **IC 23-17-19-4**

##### **Articles of merger; contents; effective date; filing**

Sec. 4. (a) After a plan of merger is approved by the board of directors and if required by section 3 of this chapter by the members and any other persons, the surviving or acquiring corporation shall deliver to the secretary of state articles of merger setting forth the following:

- (1) The plan of merger.
- (2) If approval of members was not required, a statement to that effect and a statement that the plan was approved by a sufficient vote of the board of directors.
- (3) If approval by members was required, the following:
  - (A) The designation, number of memberships outstanding, number of votes entitled to be cast by each class entitled to vote separately on the plan, and number of votes of each class indisputably voting on the plan.
  - (B) Either the total number of votes cast for and against the plan by each class entitled to vote separately on the plan or the total number of undisputed votes cast for the plan by each class and a statement that the number cast for the plan by each class was sufficient for approval by that class.
- (4) If approval of the plan by a person other than the members or the board of directors is required under section 3(a)(3) of this chapter, a statement that the approval was obtained.

(b) Unless a delayed effective date is specified, a merger takes effect when the articles of merger are filed.

(c) The surviving corporation resulting from a merger may, after the merger has become effective, file for record with the county recorder of each county in Indiana in which a merging corporation has real property at the time of the merger, the title to which will be transferred by the merger, a file-stamped copy of the articles of merger. If the plan of merger sets forth amendments to the articles of incorporation of the surviving corporation that change the surviving corporation's corporate name, a file-stamped copy of the articles of merger may be filed for record with the county recorder of each county in Indiana in which the surviving corporation has real property at the time the merger becomes effective. A failure to record a copy of the articles of merger under this subsection does not affect the validity of the merger or the change in corporate name.

*As added by P.L.179-1991, SEC.1.*

#### **IC 23-17-19-5**

##### **Effect of mergers**

Sec. 5. (a) When a merger takes effect the following occur:

- (1) Another corporation party to the merger merges into the surviving corporation and the separate existence of every corporation except the surviving corporation ceases.
- (2) The title to real property and other property owned by each corporation party to the merger is vested in the surviving corporation without reversion or impairment subject to any

conditions to which the property was subject before the merger.

(3) The surviving corporation has all liabilities and obligations of each corporation party to the merger.

(4) A proceeding pending against a corporation party to the merger may be continued as if the merger did not occur or the surviving corporation may be substituted in the proceeding for the corporation whose existence ceased.

(5) The articles of incorporation and bylaws of the surviving corporation are amended to the extent provided in the plan of merger.

(b) After a merger takes effect as provided in this article, any terms of the plan of merger that are not included in the articles of incorporation shall be considered to be contract rights only and not part of the governing document of the corporation.

*As added by P.L.179-1991, SEC.1.*

### **IC 23-17-19-6**

#### **Foreign corporations**

Sec. 6. (a) Except as provided in section 2 of this chapter, foreign business or nonprofit corporations may merge with domestic nonprofit corporations if the following conditions are met:

(1) The merger is permitted by the law of the state or country under whose laws each foreign corporation is incorporated and each foreign corporation complies with that law in effecting the merger.

(2) The foreign corporation complies with section 4 of this chapter if the foreign corporation is the surviving corporation of the merger.

(3) Each domestic nonprofit corporation complies with sections 1 through 3 of this chapter and, if the domestic nonprofit corporation is the surviving corporation of the merger, with section 4 of this chapter.

(b) Upon the merger taking effect, the surviving foreign business or nonprofit corporation is considered to have irrevocably appointed the secretary of state as the agent for service of process for the business or corporation in any proceeding brought against the business or corporation.

*As added by P.L.179-1991, SEC.1.*

### **IC 23-17-19-7**

#### **Bequests, devises, gifts, grants, or premises**

Sec. 7. A bequest, devise, gift, grant, or promise contained in a will or other instrument of donation, subscription, or conveyance that:

(1) is made to a constituent corporation; and

(2) takes effect or remains payable after the merger;

inures to the surviving corporation unless a will or other instrument otherwise specifically provides.

*As added by P.L.179-1991, SEC.1.*

**IC 23-17-19-8****Compliance with related provisions**

Sec. 8. A domestic business corporation that is a party to a merger with a nonprofit corporation under this chapter shall comply with all applicable requirements of IC 23-1 relating to mergers except when inconsistent with this chapter. A domestic business corporation that is the survivor of a merger with a nonprofit corporation is subject to IC 23-1 after the merger.

*As added by P.L.179-1991, SEC.1.*